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## A PERSUASIVE VICTORY FOR NON-PERSUADERS

[*Donovan v. Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985)]

### INTRODUCTION

Every year, employers retain labor lawyers to serve as labor relations consultants.<sup>1</sup> For example, when an employer is faced with a potentially damaging union organization campaign, it may retain lawyers to obtain a favorable outcome.<sup>2</sup> Often the activities of labor relations consultants directly violate the employees' protected rights.<sup>3</sup> To counter this problem, Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959 to regulate and make public the activities of labor relations consultants.<sup>4</sup> The LMRDA requires an attorney to file certain reports and disclosures when the attorney is retained to persuade employees in decisions regarding the organization of unions or the collective bargaining process.<sup>5</sup>

In *Donovan v. Rose Law Firm*,<sup>6</sup> a case of first impression, the Eighth Circuit Court of Appeals considered the extent to which a lawyer must report and disclose information regarding his persuader activities.<sup>7</sup> In *Rose Law Firm*, the law firm performed persuader services for the Monark Boat Company.<sup>8</sup> The Department of Labor subsequently contacted the Rose Law Firm, asking for reports and disclo-

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1. See Bernstein, *Union Busting: From Benign Neglect to Malignant Growth*, 14 U.C.D. L. REV. 3, 7 (1980).

2. *Id.* at 4.

3. For example of an illegal activity is occurs when such lawyers arrange for employers to enter into "sweetheart" contracts with union leaders in order to assure employers that there will be scapegoats from rank-and-file members. See Bernstein, *What You Can and Cannot Do Under LMRDA*, in SYMPOSIUM ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 1119, 1135 (Slovenko ed. 1961)[hereinafter cited as SYMPOSIUM](sweetheart contract is a deal between the employer and the union to abrogate the rights of the employees.)

4. LMRDA §§ 203(b), (c); (codified at 29 U.S.C. §§ 433(b), (c) (1982)).

5. For the complete text of 29 U.S.C. § 433(b), see *infra* note 31.

6. 768 F.2d 964 (8th Cir. 1985).

7. *Id.* at 967. "Persuader" activity is statutorily defined in 29 U.S.C. § 433(b). For a discussion of what constitutes "persuader" activity, see *infra* notes 34-35 and accompanying text. The Fifth Circuit defines a persuader as a person "who enters into 'an agreement or arrangement with an employer' an object of which is (1) to persuade employees as to the exercise or manner of exercising their collective bargaining rights, or (2) to supply the employer with information regarding certain activities of employees or a labor organization." *Price v. Wirtz*, 412 F.2d 647, 647-48 n.2 (5th Cir. 1969) (en banc).

8. See *id.* at 965-66.

tures encompassing not only the firm's involvement with Monark, but also all labor relations advice and services performed for any other clients.<sup>9</sup>

Reversing the district court,<sup>10</sup> the Eighth Circuit held that a lawyer is not required to report receipts and disbursements on account of labor services rendered to employers for whom the reporting lawyer has not performed persuader activities.<sup>11</sup>

*Rose Law Firm* is significant because the Eighth Circuit, wholly and logically, disagreed with four other circuit court decisions.<sup>12</sup> The Eighth Circuit's holding alters an apparent trend toward broad reporting and disclosure requirements.<sup>13</sup> Lawyers in the Eighth Circuit practicing labor law, and performing persuader activities in particular, are still required to disclose their persuader activities to the Secretary of Labor. But, where only labor-related advice and services are rendered for different clients, absent persuader activities, no report is required.<sup>14</sup>

In addressing the correctness of *Rose Law Firm*, this Comment focuses on the Eighth Circuit's application of the relevant sections on reporting and disclosure, as well as exemptions and qualifications. The legislative intent behind the reporting requirement is also emphasized. First, the Comment discusses the background of the LMRDA, highlighting its purpose and legislative history. Next, the Comment reviews the facts of *Rose Law Firm* and discusses the Eighth Circuit's analysis. Then, the Comment discusses the Fourth, Fifth, Sixth, and Seventh Circuit Court of Appeals' misinterpretations of the LMRDA. Finally, the Comment analyzes the Eighth Circuit decision from two perspectives: labor reform and legitimate attorney-client relations.

## I. BACKGROUND OF THE LMRDA

### A. Purpose and History of the Act

With the enactment of the National Labor Relations Act of 1935 (NLRA),<sup>15</sup> the government responded to an urgent need to address

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9. *Id.* at 966.

10. *Id.* The lower court decision was rendered by the United States District Court for the Eastern District of Arkansas in an unreported opinion. *Id.*

11. *Id.* at 975.

12. See, e.g., *Humphreys, Hutcheson & Moseley v. Donovan*, 755 F.2d 1211 (6th Cir. 1985); *Master Printers Ass'n v. Donovan*, 699 F.2d 370 (7th Cir. 1983), cert. denied, 464 U.S. 1040 (1984); *Price*, 412 F.2d at 647; *Douglas v. Wirtz*, 353 F.2d 30 (4th Cir. 1965), cert. denied, 383 U.S. 909 (1966).

13. See *Rose Law Firm*, 768 F.2d at 975.

14. *Id.*

15. National Labor Relations Act of 1935, 29 U.S.C. §§ 151-69 (1982).

the unfair advantage that management possessed over unions.<sup>16</sup> As government began to regulate the collective bargaining process,<sup>17</sup> employees' rights to organize unions and bargain collectively were guaranteed.<sup>18</sup> In the years following enactment of the NLRA, unfair anti-labor activities declined.<sup>19</sup> Unions grew quickly as collective bargaining became a standard practice in labor-management relations.<sup>20</sup>

Following World War II, the power of organized labor continued to grow, as did the propensity to exert such power.<sup>21</sup> There was growing national concern that labor leaders were involved in misconduct and corruption within the labor movement as well as with employers. As a result, the McClellan Committee<sup>22</sup> was authorized to investigate the extent of any criminal or improper activities by labor leaders and employers.<sup>23</sup> The Committee found evidence of violence and conspiracy among certain union leaders acting in collusion with employers.<sup>24</sup>

Although the main thrust of the Committee's findings dealt with

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16. See Beaird, *Reporting Requirements for Employers and Labor Relations Consultants in the Labor-Management Reporting and Disclosure Act of 1959*, 53 GEO. L.J. 267, 268, 279 (1965).

17. See 29 U.S.C. § 157 (1982).

18. 29 U.S.C. § 157 provides:

Employees shall have the right to self-organization, to form, join or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

*Id.* In addition, 29 U.S.C. § 158(a)(1) provides that "[i]t shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title." *Id.*

19. See Bernstein, *supra* note 1, at 3 (following passage of NLRA, tactics such as employers' use of spies, Pinkerton guards, guns, and goons disappeared or subsided).

20. See generally *id.*; Beaird, *supra* note 16, at 268.

21. See Gross, *The Evolution of American Labor Law*, in SYMPOSIUM, *supra* note 3, at 4 ("power has shifted from the members [of unions] to the leaders, as specialized and technical responsibilities brought forward union leaders who are much more like the organization men they 'bargain' with, and this has affected their attitudes towards the rank and file with what one commentator has called a touch of paternalism").

22. The "McClellan Committee" refers to the Select Committee on Improper Activities in the Labor and Management Field, Senator John McClellan of Arkansas, Chairman.

23. "[The Committee] was authorized . . . to conduct an investigation and study the extent to which criminal or other improper practices . . . are, or have been, engaged in the field of labor-management relations." Beaird, *supra* note 16, at 269.

24. See S. REP. NO. 1139, 86th Cong., 2d Sess. 4 (1958).

the internal functioning of labor unions,<sup>25</sup> the Committee discovered abuses by employers using third-party middlemen to control or to influence employees exercising their rights during labor disputes.<sup>26</sup> In its first interim report, the Committee strongly suggested that legislation be enacted to curb the activities of these middlemen by requiring full disclosure and reporting of their agreements with employers regarding the employees' rights to organize and bargain collectively.<sup>27</sup>

As a result of the McClellan Committee's recommendation, Senators Kennedy and Ives co-sponsored a labor-management reform bill.<sup>28</sup> Passed by the Senate but not the House,<sup>29</sup> the bill contained the initial version<sup>30</sup> of section 203(b) of the LMRDA<sup>31</sup> which re-

25. See Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851, 886 (1960).

26. See S. REP. NO. 187, 86th Cong., 1st Sess. 10 (1959), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1959, at 406 (1959) [hereinafter cited as 1 LEGISLATIVE HISTORY OF THE LMRDA]. The McClellan Committee report describes management middlemen "flitting about the country on behalf of employers to defeat attempts at labor organization." *Id.*

27. *Id.*

28. S. 3974, 85th Cong., 2d Sess. (1958) [hereinafter cited as "Kennedy-Ives"].

29. Leiter, *LMRDA and Its Setting*, in SYMPOSIUM, *supra* note 3, at 12. "[U]nder the guidance of John F. Kennedy, the Kennedy-Ives Bill passed the Senate, but factional differences and conflicting pressures prevented passage in the House." *Id.* at 14.

30. Section 103(b) of the Kennedy-Ives bill reads as follows:

Every person engaged in providing labor relations consultant service to an employer engaged in an industry affecting commerce pursuant to any agreement or arrangement under which such consultant undertakes—

(A) to influence or affect employees in the exercise of their rights guaranteed by section 7 of the National Labor Relations Act, as amended, or by the Railway Labor Act, as amended, or

(B) to provide an employer involved in a labor dispute with the services of paid informants or investigators, or any agency or instrumentality engaged in the business of interfering with, restraining, or coercing employees in the exercise of rights guaranteed by section 7 of the National Labor Relations Act, as amended, by the Railway Labor Act, as amended, or (sic) shall file annually a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the following information:

(1) the name under which the labor relations consultant is engaged in doing business and the address of its principal place of business;

(2) receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof;

(3) disbursements of any kind, in connection with such services and the purposes thereof; and

(4) a detailed statement of such agreement or arrangement.

*Provided*, that nothing in this section shall be construed to require a report from a labor relations consultant retained by an employer by reason of his giving advice to such employer or representing such employer in any court or administrative agency or engaging in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of

quires lawyers acting as labor relations consultants to report and disclose agreements.

With the adoption of the LMRDA, and specifically sections 203(b) and (c),<sup>32</sup> Congress enacted legislation to curb the questionable activities of lawyers hired by employers to perform persuader activities.<sup>33</sup> “Persuader” activities are defined as those activities which influence employees in their collective bargaining decisions, including their choice of union representatives<sup>34</sup> or to supply information regarding employee activities to an employer.<sup>35</sup>

When the Eighty-Sixth Congress convened, Senators Kennedy and Ervin<sup>36</sup> introduced the Kennedy-Ervin bill.<sup>37</sup> This bill followed the Kennedy-Ives bill—with a few exceptions—in imposing reporting

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employment or the negotiation of an agreement or any question arising thereunder.

S. 3974, § 103(b), 85th Cong., 1st Sess. 12-13 (1958).

31. Section 203(b) of the LMRDA provides:

Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designated the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case information shall be set forth in such categories as the Secretary may prescribe.

29 U.S.C. § 433(b)(1)-(2) (1982).

32. The LMRDA was passed by the House and the Senate and signed by the President. 105 CONG. REC. 16653 (1959), *reprinted in* 2 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1959, at 1738 (1959) [hereinafter cited as 2 LEGISLATIVE HISTORY OF THE LMRDA ].

33. *See supra* note 7.

34. *See* Bernstein, *supra* note 1, at 3-4. “Labor relations consultants advise employers on how to manipulate their employees’ working lives and environment in order to ‘prevent’ unions . . . .” *Id.*

35. *See id.* at 16. For example, labor consultants may recommend taking “morale surveys” for the purpose of determining union sympathizers. *Id.*

36. 105 CONG. REC. 816 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 803, 968.

and disclosure requirements upon lawyers who perform persuader activities for employers.<sup>38</sup> The Kennedy-Ervin bill went to committee<sup>39</sup> and was introduced for Senate consideration.<sup>40</sup> During this period, the House considered bills by Representative Elliot and Representatives Landrum and Griffin.<sup>41</sup> The House called up the Landrum-Griffin bill as a substitute for the Elliot bill,<sup>42</sup> and then substituted the text of the Elliot bill for the Senate bill.<sup>43</sup> The House then held a conference with the Senate to resolve the differences between the two bills.<sup>44</sup> The measure was approved by the conference,<sup>45</sup> reported by the House conferees,<sup>46</sup> and passed by both the Senate and the House.<sup>47</sup>

### B. Statutory Analysis

Thus, the LMRDA is literally a "patchwork" of bills considered by both houses,<sup>48</sup> as well as by the President.<sup>49</sup> The bill contains sec-

37. See S. 505, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 29-79.

38. See S. 505, § 103(b). For the complete text of § 103(b), see *infra* note 68.

39. The Committee on Labor and Public Welfare, 86th Cong., 1st Sess. 4600 (1959); see 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1015.

40. 105 CONG. REC. at 4618, *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1015 (at this point the Kennedy-Ervin bill was given a new number - S. 1555).

41. 105 CONG. REC. 13,125 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1527.

42. The report of the House Committee on Education and Labor, together with the minority, supplemental, and individual views of the committee members, were issued on July 30, 1959. H.R. REP. NO. 741, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 759-864. On August 13, 1959, the measure was again approved in a final vote of 229 to 201. 105 CONG. REC. 14519-20 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1691-92.

43. 105 CONG. REC. 14,540 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1701-02.

44. *Id.* at 14,555, *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1702.

45. H. REP. NO. 1147, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 934.

46. *Id.* at 934.

47. 105 CONG. REC. 16,435, 86th Cong., 1st Sess. 967 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1452-53 (Senate approval of conference report); *id.* at 16,653-54, *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1738-39 (House approval of conference report).

48. Comment, *Local 82, Furniture Moving Drivers v. Crowley: A Restatement of Institutional Power Under Titles I and II of the LMRDA*, 34 CATH. U.L. REV. 181 (1984), states that: "[r]eporting and disclosure" alludes to only one of [LMRDA's] seven titles; and 'Landrum-Griffin' immortalizes not its most substantive contributors but rather the compilers of the composite bill that most closely resembled the final enactment." *Id.* at 183.

49. S. Doc. No. 10, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE

tions which have proven both confusing and conflicting.<sup>50</sup> Hence, a proper analysis of sections 203(b) and (c) must begin by analyzing the legislative intent and structure of each proposed bill prior to the enactment of the final legislation. By analyzing the various components, the "patchwork" is better understood.

Section 203(b) of the LMRDA was included to regulate the activities of lawyers.<sup>51</sup> Two activities will trigger the reporting requirement. When an agreement is made between the lawyer and the employer to "persuade" employees about their organization and collective bargaining rights, or to inform employers of their employees' labor activities, a report must be filed within thirty days with the Secretary of Labor.<sup>52</sup> The report must detail the terms and conditions of the agreement or arrangement.<sup>53</sup> An additional report is required to be filed annually, stating the receipts and disbursements in connection with labor relations advice and services and the purpose thereof.<sup>54</sup>

Section 203(c) of the LMRDA explains that nothing in section 203 "shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice . . . ."<sup>55</sup> In addition, section 203(c) does not require a report from a lawyer representing an employer in labor-related legal functions.<sup>56</sup>

Section 203(b), thus, applies to any person who has, in any particular year, engaged in any persuader activities with employees, or acted in the capacity as an informant for an employer. Such person must file a report including all receipts and disbursements in connection with *any* advice and services rendered for *all* labor employers in the

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HISTORY OF THE LMRDA, *supra* note 27, at 80-83 (Eisenhower's 20 Point Program to Eliminate Abuses and Improper Practices in Labor-Management Relations).

50. See Comment, *supra* note 48, at 183-87.

51. "The middlemen have acted, in fact if not in law, as agents of management." S. REP. NO. 187, 86th Cong., 1st Sess. 10 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 406.

52. See LMRDA § 203(b), 29 U.S.C. § 433(b)(1)-(2) (1982).

53. *Id.*

54. *Id.*

55. LMRDA § 203(c) specifically provides:

Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

29 U.S.C. § 433(c) (1982).

56. *Id.*



same fiscal year.<sup>57</sup> Subsection (c), however, appears to exempt a lawyer from filing reports when the lawyer only gives or agrees to give labor relations advice or when he represents an employer in related legal functions.<sup>58</sup>

### 1. *Conflict Between Subsections (b) and (c)*

The conflict between subsections (b) and (c) arises when a lawyer, in one fiscal year, performs or agrees to perform persuader activities for one employer, and non-persuader activities for another employer.<sup>59</sup> Reading subsections (b) and (c) together, there appears to be two possible interpretations of subsection (c). One possible interpretation is that subsection (c) excludes the reporting of advice only if the lawyer has not performed both persuader activities and informant services for any employer. Such acts are reportable under subsection (b) for *any* labor relations employer.<sup>60</sup> The second possible interpretation is that subsection (c) excludes from the reporting requirement only advice and services for employers for whom the lawyer does not perform or agree to perform persuader or informant activities.<sup>61</sup> Upon a simple reading, a definite interpretation and reconciliation of subsections (b) and (c) appears impossible. A progression, however, from the original labor reform act, the Kennedy-Ives bill,<sup>62</sup> through the first act as passed by Congress, indicates that the second possibility is the only interpretation applicable.

### 2. *Evolution of the Reporting Requirement*

The initial version of sections 203(b) and (c) was originally section 103(b)<sup>63</sup> of the Kennedy-Ives bill. Section 103(b) required attorneys, who attempted "to influence or affect" employees exercising their rights, to file reports with the Secretary of Labor.<sup>64</sup> Section 103(b) required the reporting of the lawyer's name, receipts and disbursements of labor relations advice and services, and details of the agreement.<sup>65</sup> In addition, section 103(b) contained a provision stating that nothing in section 103 "shall be construed to require a re-

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57. LMRDA § 203(b), 29 U.S.C. § 433(b)(1)-(2) (1982).

58. LMRDA § 203(c), 29 U.S.C. § 433(c) (1982).

59. See Aaron, *supra* note 25, at 891 ("This is another example of the ambiguities produced by the inartistic draftmanship which characterizes much of the statute.").

60. LMRDA § 203(b), 29 U.S.C. § 433(b)(1)-(2) (1982). See Note, *Two Views of a Labor Relations Consultant's Duty to Report Under Section 203 of the LMRDA*, 65 MICH. L. REV. 752, 754 (1967).

61. Note, *supra* note 63, at 754. LMRDA § 203(b), 29 U.S.C. § 433(b)(1)-(2) (1982).

62. S. REP. NO. 1684, 85th Cong., 2d Sess. 12-13 (1958).

63. See Kennedy-Ives bill, *supra* note 30.

64. *Id.*

65. *Id.*

port from a labor relations consultant . . . by reason of his giving advice . . . or representing such employer . . . .”<sup>66</sup> By its very terms, section 103(b) qualified the reporting requirement for lawyers. According to the Senate Report which accompanied the Kennedy-Ives bill, this qualification was a proviso to guard against misconstruction, “merely making an implicit point explicit.”<sup>67</sup>

The Kennedy-Ervin bill,<sup>68</sup> which followed Kennedy-Ives, contained similar language on the reporting requirements for lawyers. There was, however, a change in the structure of section 103. Significantly, what had been a mere proviso in the Kennedy-Ives bill, was set out in a separate subsection in the Kennedy-Ervin bill.<sup>69</sup> Section 103(c) of the Kennedy-Ervin bill became the language of section

66. *Id.*

67. See S. REP. NO. 1684, 85th Cong., 2d Sess. 9 (1958), reprinted in 22 U.S. REP. & DOC. (1958) (“although this would be the meaning of the language of sections 103(a) and (b) in any event, a proviso to section 103(b) guards against misconstruction.”).

68. The Kennedy-Ervin bill states, in relevant part:

(b) Every person engaged in providing labor relations consultant service to an employer engaged in an industry affecting commerce pursuant to any agreement or arrangement under which such consultant undertakes activities where an object thereof is, directly or indirectly—

(A) to persuade employees not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing;

(B) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute, except information for use solely in conjunction with a judicial, administrative or arbitral proceeding, shall file annually a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the following information:

(1) the name under which the labor relations consultant is engaged in doing business and the address of its principal place of business;

(2) receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof;

(3) disbursements of any kind, in connection with such services and the purposes thereof; and

(4) a detailed statement of the terms of such agreement or arrangement.

(c) Nothing in this section shall be construed to require any employer or a labor relations consultant to file a report covering the services of a consultant by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

S. 505, 86th Cong., 1st Sess. 12-14 (1959), reprinted in 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 40-42.

69. S. 505, 86th Cong., 1st Sess. 13 (1959), reprinted in 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 31-32. A relatively minor change occurred in the requisite action which “triggers” the reporting requirement. See Kennedy-Ives bill, *supra* note 30. “To influence or affect” was replaced by “to persuade” employees. See Kennedy-Ervin bill, *supra* note 68.

203(c) of the LMRDA.<sup>70</sup> The Kennedy-Ervin bill went to Committee and was reintroduced to the Senate as S. 1555.<sup>71</sup> The Senate passed it by a vote of ninety to one.<sup>72</sup>

The House Committee on Education and Labor considered many bills, including Kennedy-Ervin.<sup>73</sup> The original Landrum-Griffin bill was called up as a substitute for the Elliot bill.<sup>74</sup> The reporting requirements and their qualifications and exemptions were nearly identical. The text of the original Landrum-Griffin bill was then substituted for Kennedy-Ervin.<sup>75</sup> The House then added a section excluding confidential information between an attorney and his client "in the course of a legitimate attorney-client relationship."<sup>76</sup> Confidential relations included, but were not limited to, "the relationship of attorney and client, the financial details thereof, or any information obtained, advice given, or activities carried on by the attorney within the scope of the legitimate practice of law."<sup>77</sup>

## II. THE ROSE LAW FIRM DECISION

### A. Facts

In August, 1980, the Rose Law Firm entered into an agreement with the Monark Boat Company to provide legal advice regarding the union organizing activities of the United Brotherhood of Carpenters and Joiners of America (Union).<sup>78</sup> During the course of the Union organizing activities, a lawyer from the Rose Law Firm

70. Compare § 505, 86th Cong., 1st Sess. 13 (1959), *reprinted in* LEGISLATIVE HISTORY OF THE LMRDA, with LMRDA § 203(c), 29 U.S.C. § 433(c) (1982).

71. H.R. 8400, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 619-86; 105 CONG. REC. 13,125 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1527.

72. 105 CONG. REC. 6,048 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1257.

73. *Id.* at 6,399, *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1481. The section on reporting requirements was very similar, but other sections of the Landrum-Griffin bill, irrelevant here, were more favorable to the House. See Aaron, *supra* note 25, at 860.

74. H.R. REP. NO. 741 ON H.R. 8342, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 759.

75. 105 CONG. REC. 14,395 (1959), *reprinted in* 2 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 32, at 1646-98, 1651-55.

76. LMRDA § 204, 29 U.S.C. § 434 (1982). Section 204 provides:  
Nothing contained in this chapter shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this chapter any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

*Id.*

77. H. REP. NO. 741 ON H.R. 8342, 86th Cong., 1st Sess. 37 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 795.

78. *Rose Law Firm*, 768 F.2d at 965.

conducted discussions with employees of the Monark Boat Company.<sup>79</sup> The Department of Labor considered these discussions to be persuader activities under section 203(b) of the LMRDA.<sup>80</sup>

The Department of Labor subsequently contacted the Rose Law Firm requesting that they file the necessary reporting forms.<sup>81</sup> After two years, the firm filed forms for its work for the Monark Boat Company, but refused the Secretary's demand that they file disclosure reports regarding labor relations advice and services rendered to other employers.<sup>82</sup> The Department of Labor then filed suit against the Rose Law Firm seeking an order from the district court compelling the firm to comply with the reporting requirement.<sup>83</sup> In June of 1984, the district court entered judgment in favor of the Department of Labor.<sup>84</sup>

### B. Analysis

Not surprisingly, the Eighth Circuit stated that a mere reading of the language of sections 203(b) and (c) does not clearly indicate a preferred statutory interpretation.<sup>85</sup> Instead, the court examined the relevant legislative history to determine the congressional intent.<sup>86</sup>

First, the court compared section 203(c) of the LMRDA, as ultimately adopted, to the initial proposal in the Kennedy-Ives bill.<sup>87</sup> The proviso to section 103(b) of the Kennedy-Ives bill states that "[n]othing in this act shall be construed to require a report from a labor relations consultant retained by an employer by reason of his giving advice . . . ."<sup>88</sup> The comparable portion of the LMRDA states that "[n]othing in this section shall be construed to require any employer or other person to file a report *covering the services of such person* by reason of his giving or agreeing to give advice . . . ."<sup>89</sup> The court stressed that the additional language of section 203(c) is significant because the proviso of section 103(b) merely defines when a report is not required.<sup>90</sup> On the other hand, section 203(c)

79. *Id.*

80. *See supra* text and accompanying notes 31-32.

81. *Rose Law Firm*, 768 F.2d at 965.

82. Brief for Appellee at IX-X, *Donovan v. Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985) (copy on file at the William Mitchell Law Review office).

83. *Id.* at X.

84. *Id.*

85. *Rose Law Firm*, 768 F.2d at 970. This is another example of the ambiguities caused by the inarticulate draftsmanship which characterizes much of the statute. *See Aaron, supra* note 25, at 891.

86. *Rose Law Firm*, 768 F.2d at 967.

87. *Id.* at 970.

88. *Kennedy-Ives, supra* note 30.

89. LMRDA § 203(c), 29 U.S.C. § 433(c) (1982) (emphasis added).

90. *Rose Law Firm*, 768 F.2d at 971.

of the LMRDA "specifically refers to, and places limitations on, the content of the report required by section 203(b)."<sup>91</sup>

The additional language first appeared in section 103(c) of the Kennedy-Ervin bill.<sup>92</sup> Though the addition was similar to the language of section 103(b) of the Kennedy-Ives bill, the court found that the bill's addition was not a proviso intended to make an implicit point explicit.<sup>93</sup> Instead, the court found that section 103(c) of the Kennedy-Ervin bill appeared to be a broad-based exception to the reporting requirement of the Kennedy-Ives bill.<sup>94</sup>

When the Kennedy-Ervin bill reemerged as S. 1555, it was accompanied by Senate Report No. 187.<sup>95</sup> In determining that the language of section 103(c) of S. 1555 was indeed a broad-based exception, the court noted that Senate Report No. 1684,<sup>96</sup> which accompanied the Kennedy-Ives bill, indicated that the proviso of section 103(b) was a clarification of the reporting requirement.<sup>97</sup> Senate Report No. 187 did not "carry forward the thought" that section 103(c) of S. 1555 was simply a mirror of section 103(b) of Kennedy-Ives bill.<sup>98</sup> The court found this omission from Senate Report No. 187 significant.<sup>99</sup> The court continued to focus on a narrower reporting requirement by finding a broader exemption.

The court believed, however, that the best indication of legislative intent of sections 203(b) and (c) was the Conference Committee Report on the LMRDA.<sup>100</sup> The conference report states that section 203(c) grants an attorney rendering labor advice "a broad exemption from the requirements of the [LMRDA]."<sup>101</sup> The court was faced

91. *Id.* (emphasis in original).

92. S. 505, 86th Cong., 1st Sess. 13 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 41.

93. *See Rose Law Firm*, 768 F.2d at 973.

94. *Id.* at 974.

95. S. REP. NO. 187, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 397.

96. S. REP. NO. 1684, 85th Cong., 2d Sess. 1 (1958), *reprinted in* 22 U.S. REP. & DOC. (1958).

97. *Id.* at 9, *reprinted in* 22 U.S. REP. & DOC. (1958).

98. *See Rose Law Firm*, 768 F.2d at 972. Senate Report No. 187 states:

An attorney or consultant who confines himself to giving legal advice, taking part in collective bargaining and appearing in court or administrative proceedings would not be included among those required to file reports under this subsection. *Specific exemption for persons giving this type of advice is contained in subsection c of section 103.*

S. REP. NO. 187, 86th Cong., 1st Sess. 12 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 408 (emphasis added).

99. *See Rose Law Firm*, 768 F.2d at 972.

100. *Id.* at 974; *see also* H.R. REP. NO. 1147, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 934.

101. H.R. REP. NO. 1147, 86th Cong., 1st Sess. 33 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 934.

with interpreting legislative intent using either the Senate Report of the Kennedy-Ives bill, or the conference report on the final version of the LMRDA. The court believed it a better practice to choose the latter.<sup>102</sup>

The Eighth Circuit was further persuaded by “what appears to have been a deliberate choice by Congress to introduce an element of congruity into [all] the reporting requirements of the LMRDA.”<sup>103</sup> That is, the court believed that the required reports of one party in an agreement should mirror other reports filed by any other party in the agreement. The court found that an employer was not required to file a report when he sought only labor relations advice from an attorney.<sup>104</sup> The court believed that if Congress desired congruous results, then it was “unlikely that Congress intended to require the *content* of reports by persuaders under section 203(b) and (c) to be so broad as to encompass dealings with employers who are not required to make any report whatsoever under section 203(a)(4).”<sup>105</sup>

### III. ANALYSIS OF OTHER CIRCUITS

Prior to *Rose Law Firm*, four circuit courts of appeals considered the extent to which a lawyer was required to file reports when, in the same fiscal year, he performed both traditional labor consultant activities as well as persuader activities for separate employers.<sup>106</sup> The Fourth, Fifth, Sixth, and Seventh Circuit Courts of Appeals all relied

102. *Rose Law Firm*, 768 F.2d at 974.

103. *Id.*

104. *Id.* Section 203(a)(4) of the LMRDA provides:

(a) Every employer who in any fiscal year made—  
 . . . (4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

LMRDA § 203(a)(4), 29 U.S.C. § 433(a)(4) (1982).

105. *Rose Law Firm*, 768 F.2d at 975.

106. See *Humphreys*, 755 F.2d at 1216; *Master Printers*, 699 F.2d at 371; *Price*, 412 F.2d at 651; *Douglas*, 353 F.2d at 32.

on the early legislative history and principles of statutory construction in order to reconcile the conflict between the language of sections 203(b) and (c) of the LMRDA.<sup>107</sup> These circuits held that reports and disclosures were required for all labor clients once a lawyer has performed or agreed to perform persuader activities for *any* client.<sup>108</sup>

The first court to face the problem of interpretation of sections 203(b) and (c) of the LMRDA was the Fourth Circuit Court of Appeals in *Douglas v. Wirtz*.<sup>109</sup> The Fourth Circuit held that subsection (c) excludes the advice or representation by a lawyer from subsection (b)'s reporting requirement only if the lawyer has performed *no* subsection (b) activities for *any* employer.<sup>110</sup> The court reasoned that the word "advice" in and of itself does not create an obligation to report.<sup>111</sup> The court believed, however, that subsection (c), read together with subsection (b), required that both advice and persuader activities must be reported when both are performed in the same fiscal year.<sup>112</sup> The court found this to be true when each is performed for separate employers. The Fourth Circuit reasoned that to hold otherwise would "suggest a misconstruction of the provision."<sup>113</sup> "Advice" must therefore mean independent advice. Accordingly, a lawyer would not be required to report activities "by reason of" the giving of independent advice.<sup>114</sup> However, if an obligation arises by reason of persuader activity, then both persuader activity and independent labor relations advice must be reported. The court based its reasoning on the Senate Committee Report of the Kennedy-Ives bill.<sup>115</sup> The report stated the following:

an attorney or other consultant who confined himself to giving advice, taking part in collective bargaining and appearing in court and administrative proceedings nor [sic] would such a consultant be required to report. Although this would be the meaning of the language of sections 103(a) and (b) in any event, a *proviso* to section 103(b) guards against misconstruction.<sup>116</sup>

The issue was again resolved in favor of the Secretary of Labor in

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107. See *Humphreys*, 755 F.2d at 1216-19; *Price*, 412 F.2d at 648-51; *Douglas*, 353 F.2d at 32-33; *Master Printers v. Donovan*, 532 F. Supp. 1144 (N.D. Ill. 1981).

108. See *Humphreys*, 755 F.2d at 1216-19; *Price*, 412 F.2d at 651; *Douglas*, 353 F.2d at 32; *Master Printers*, 532 F. Supp. at 1147.

109. *Douglas*, 353 F.2d at 30.

110. See *id.* at 32.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. S. REP. NO. 1684, 85th Cong., 2d Sess. 9 (1958), reprinted in 22 U.S. REP. & DOC. (1958) (emphasis added).

*Price v. Wirtz*.<sup>117</sup> The Fifth Circuit relied heavily on the Fourth Circuit's opinion.<sup>118</sup> The court felt compelled to interpret sections 203(b) and (c) by using the Senate Report which accompanied the Kennedy-Ives bill.<sup>119</sup> The court stressed that the legislative intent was to publicize the activities of lawyers who participate in questionable labor relations practices.<sup>120</sup>

The Fifth Circuit believed that by publicizing persuader activities, Congress intended to publicize all questionable activities of employers and the lawyers hired by them.<sup>121</sup> The court believed such broad exposure was justified because of the complexities in representing corporate conglomerates.<sup>122</sup> Like the *Douglas* court, the Fifth Circuit held that if a lawyer limits himself to legitimate labor relations, and performs no persuader activities, there is no duty to report his legitimate activities.<sup>123</sup>

In 1983, in *Master Printers Association v. Donovan*,<sup>124</sup> the Seventh Circuit Court of Appeals affirmed the district court's narrow interpretation of section 203(c). The court held that lawyers must report *all* advice given and services rendered for *all* labor clients, when the consultant has become involved in persuader activities.<sup>125</sup> In *Master Printers*, the district court stated that Congress was not addressing

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117. 412 F.2d 647 (5th Cir. 1969). The dissent in *Price* was concerned that the majority's holding would force lawyers to report and disclose information between a lawyer/persuader and his non-persuader clients for whom no persuader activities were performed. This would be the case whether the client had any knowledge of the attorney's persuader activities, whether the client received advice or services before or after the persuader activities, the advice or services were material or relevant, or the client is ever aware of the persuader activities. The dissent stated:

It must be emphasized that the rights with which we are here concerned are fundamental First and Fourth Amendment rights. That labor relations employers have the right to speak to attorneys regarding their business labor relations, to associate with attorneys for lawful legal advice, and to have private affairs of a lawful nature protected from governmental intrusion is beyond dispute. That the attorneys as well as the employers enjoy the same rights seems also beyond dispute. That the particular matters, financial affairs including the amounts and sources of receipts and the amounts and purposes of disbursements, are of a confidential nature should be equally clear. And that disclosure by the attorney must necessarily expose and affect the client-employer is just as certain.

*Price*, 412 F.2d at 652-59. The court overruled *Wirtz v. Fowler*, 372 F.2d 315 (1966). *Price*, 412 F.2d at 651. The Fifth Circuit sat *en banc* because of the significance of the case. *Id.* Five of the judges dissented.

118. *Price*, 412 F.2d at 649.

119. *Id.* at 650 n.15.

120. *Id.* at 650; see *Wirtz*, 372 F.2d at 334.

121. *Price*, 412 F.2d at 650.

122. *Id.*

123. See *id.* at 650-51.

124. 699 F.2d 370 (7th Cir. 1983).

125. *Id.* at 371.



persuader activity in and of itself.<sup>126</sup> Rather, the court stated that Congress believed that consultants who performed persuader activities tended to engage in questionably unfair labor practices.<sup>127</sup> Therefore, to avoid concealing unfair labor practices under the guise of labor advice or services, all activities of consultants acting as persuaders must be subject to public scrutiny.<sup>128</sup> As did the previous circuit courts, the Seventh Circuit relied on the Senate Report which accompanied the Kennedy-Ives bill in determining that the proviso of section 103(b) was intended merely to make an implicit point explicit.<sup>129</sup>

Finally, in *Humphreys, Hutcheson & Moseley v. Donovan*,<sup>130</sup> the Sixth Circuit Court of Appeals agreed in relevant part with the Fifth Circuit's decision in *Price*. That is, that section 203(c) of the LMRDA was a clarification of the reporting requirement of section 203(b), and not an exemption from reporting.<sup>131</sup>

#### IV. DISCUSSION

In *Rose Law Firm*, the Eighth Circuit correctly narrowed the reporting and disclosure requirement of section 203(b). The four circuit courts that addressed the issue prior to *Rose Law Firm* were unable to logically determine the clear statutory intent because they misinterpreted key factors and indicators of the requirements of sections 203(b) and (c). An important consideration is simply that non-lawyers who practice as labor relations consultants are not bound by ethical considerations regarding confidentiality with their clients. Understanding this, it becomes obvious that in enacting the LMRDA and its relevant reporting and disclosure sections, Congress must have intended proper exemptions for lawyers engaging in legitimate labor relations with their clients.

##### A. Labor Reform

The Eighth Circuit succeeded in better interpreting the conflicting sections of the LMRDA by thoroughly examining the progression of the Kennedy-Ives bill to the LMRDA as finally enacted. An evolution to a broad-based exemption to section 203(b) of the LMRDA ap-

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126. *Master Printers*, 532 F. Supp. at 1150.

127. *See id.*

128. *Id.*

129. *See Master Printers*, 699 F.2d at 371; *see also Master Printers*, 532 F. Supp. at 1145-46.

130. 755 F.2d 1211 (6th Cir. 1985). The law firm sought declaratory judgment and an injunction against the Secretary of Labor in an action arising from a speech made to employees by a law firm partner in connection with a union organizational election. *Id.* at 1213-14.

131. *Id.* at 1215-16.

appears more obvious in view of the additional language of section 103(c) of the Kennedy-Ervin bill and its accompanying committee report which followed the reintroduction of S. 505 as S. 1555.<sup>132</sup> The Senate Report stated that not all of the activities which section 103(b) required to be reported were illegal, but that most fell into a "gray area."<sup>133</sup> The Committee felt that if a lawyer indulged in persuader activities, the activities should be reported.<sup>134</sup> The committee recognized, however, that a lawyer who "confines himself to giving legal advice" is exempt from the reporting requirements.<sup>135</sup> This language supports the reasoning that a very broad exemption to section 203(b)'s reporting requirement was being set forth.

If the activities of the lawyer fell within the gray area, they were required to be reported. If, however, the activity was only that of a legitimate and traditional labor consultant practice, then section 103(c) excluded the lawyer from the reporting requirement of section 103(b). A further indication of the statutory exemption granted by section 203(c) is the Conference Committee Report.<sup>136</sup> The Conference Report states that section 203(c) grants "a broad exemption from the requirements of the sections with respect to giving advice."<sup>137</sup>

### B. Section 204

The Conference Committee desired to exclude from subsection 203(b)'s requirement information arising in the course of traditional attorney-client relationships.<sup>138</sup> This desire is manifested in section 204. Section 204 provides that the LMRDA will not require an attorney who is a member in good standing of the bar "to include in a report . . . any information which is lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship."<sup>139</sup>

In order to understand the significance of section 204 it is necessary to keep in mind section 203(a)(4).<sup>140</sup> Section 203 (a)(4) paral-

132. S. REP. NO. 187, 86th Cong., 1st Sess. 1 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 397.

133. *Id.* at 11, *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 407.

134. *Id.*

135. *Id.* at 12, *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 408.

136. H.R. REP. NO. 1147, 86th Cong., 1st Sess. 33 (1959), *reprinted in* 1 LEGISLATIVE HISTORY OF THE LMRDA, *supra* note 26, at 937.

137. *Id.*

138. *See id.*

139. LMRDA § 204, 29 U.S.C. § 434. For the complete text of § 204, see *supra* note 76.

140. LMRDA § 203(a)(4), 29 U.S.C. § 433(a)(4) (1982).

els section 203(b) which requires a lawyer to file reports.<sup>141</sup> Section 203(a)(4) requires an employer to report "any agreement or arrangement with a labor relations consultant . . . to persuade employees."<sup>142</sup>

If an employer enters into an agreement or arrangement with a lawyer which does not involve coercion or interference with the employees' rights to organize and bargain collectively, the employer is not required to report the terms of that agreement.<sup>143</sup> This is the case, even though the employer may have, in the same year, retained another lawyer to persuade employees.<sup>144</sup> Section 204 still precludes the Secretary from requiring a report detailing any agreement or arrangement between the lawyer and the employer for whom the lawyer does not perform persuader activities.<sup>145</sup> In other words, the lawyer performing non-persuader activities is not required to report information regarding his agreement with that employer. The reporting requirements should not change merely by virtue of the fact that in the same fiscal year, a lawyer may have performed persuader activities for another client. To interpret sections 203(b) and (c) otherwise requires a lawyer to file a report detailing the agreement between the lawyer and an employer regarding information which is not required to be reported by the employer and which arises within "the course of a legitimate attorney-client relationship."<sup>146</sup>

### CONCLUSION

The LMRDA is a successful piece of legislation which has greatly protected union members from the dangers of collusion between union leaders and management. The Act's reporting and disclosure requirements and related exceptions, however, are examples of the hasty efforts of Congress to pass a law while under great political pressure. As a result, courts have been required to reconcile poor draftsmanship and interpret an act comprised of the language of several bills. The Eighth Circuit's holding is significant for lawyers practicing labor law, and those performing persuader activities in particular. The Eighth Circuit's holding will protect both the lawyer

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141. See LMRDA § 203(b), 29 U.S.C. § 433(b). For the text of the statute, see *supra* note 31.

142. LMRDA § 203(a)(4), 29 U.S.C. § 433(a)(4).

143. *Id.* § 203(c), 29 U.S.C. § 433(c). "Yet, it is clear from the language of the Act that an employer does not have to report the services of a consultant from whom he has taken 'advice,' say on the setting up of a union-busting campaign." Roosevelt, *LMRDA in the Congressional Arena*, SYMPOSIUM, *supra* note 3, at 123, 129.

144. See LMRDA § 203(c), 29 U.S.C. § 433(c).

145. LMRDA § 204, 29 U.S.C. § 434.

146. *Id.*

and the non-persuader client for whom the lawyer provides labor-related services.

The Eighth Circuit, in correctly interpreting section 203(b) and (c) of the LMRDA, has forged ahead against decisions of four other circuits. Though this is a correct interpretation, Congress should eliminate this confusion by amending the LMRDA to clearly state that lawyers are not required to report non-persuader activities.

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